IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 25430 of 2007(B)

PETITIONER:

M.K.GEETHAKUMARI, AGED 45 YEARS,
D/O.K.KAMALAMMA, BANK EMPLOYEE,
RESIDING AT 29/MLRA,KUMARAPURAM MEDICAL COLLEGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.T.MADHU
SRI.S.LALEEDHARAN
SRI.B.K.RAJAGOPAL

RESPONDENTS:
----

1. K.JEEVAN, AGED 43 YEARS,
S/O.KARAMACHANDRAN, BUSINESS, RESIDING AT
TC 27/750,SIVODAYAM, CANCHIYOOR,
THIRUVANANTHAPURAM.

2. THE PUNJAB NATIONAL BANK HOUSING
FINANCE LTD, BRANCH OFFICE,
THIRUVANANTHAPURAM, REP. BY ITS AUTHORISED
OFFICER, PNB HOUSING FIANANCE LTD,CAPITAL TOWER,
STATUE,THIRUVANANTHAPURAM.

BY ADV. SRI.R.S.MOHANAN NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.25430/07

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.NO.492/02 on the FILE OF THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM.

EXT.P2: TRUE COPY OF the LETTER SENT BY THE 1ST RESPONDENT TO SUSHA SUBIL, ADVOCATE, DT.NIL.

EXT.P3: TRUE COPY OF THE MEMO OF APPEARANCE FILED BY R.SUSHA, ADVOCATE IN O.S.NO.492/02 ON THE FILE OF the IIND ADDL.SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM.

EXT.P4: TRUE COPY OF THE B DIARY EXTRACT IN RELATION TO O.S.492/02 ON THE FILE OF THE SUB COURT, THIRUVANANTHAPURAM.

EXT.P5: TRUE COPY OF THE JUDGMENT AND DECREE DT.31.1.2004 IN O.S.NO.492/02 ON THE FILE OF THE SUB COURT, THIRUVANANTHAPURAM.

EXT.P6: TRUE COPY OF THE PETITION DT.31.7.04 FILED BY THE 1ST RESPONDENT BEFORE THE SUBORDINATE JUDGE'S COURT, THIRUVANANTHAPURAM.

EXT.P7: TRUE COPY OF THE ORDER DT.3.8.06 IN I.A.NO.4257/04 IN O.S.NO.492/02 ON THE FILE OF THE SUB COURT, THIRUVANANTHAPURAM.

EXT.P8: TRUE COPY OF THE RELEVANT PORTION OF THE B DIARY PROCEEDINGS WITH RESPECT TO O.S.NO.492/02 ON THE FILE OF THE SUB COURT, THIRUVANANTHAPURAM.

EXT.P9: TRUE COPY OF THE ORDER DT.19.8.06 IN I.A.NO.4257/04.

EXT.P10: TRUE COPY OF THE ORDER DT.31.7.07 IN IA NO.4447/07 IN WPC NO.1648/07 OF THIS HON'BLE COURT.

EXT.P11: TREU COPY OF THE CHALAN RECEIPT DT.27.7.04 ISSUED BY THE STATE BANK OF TRAVANCORE, TREASURY BRANCH, THIRUVANANTHAPURAM.

EXT.P12: TRUE COPY OF THE AUCTION NOTICE DT.23.2.2006 ISSUED BY THE 2ND RESPONDENT.

EXT.P13: TRUE COPY OF THE ORDER DT.29.3.06 IN IA NO.2475/06 IN O.S.NO.367/06 ON THE FILE OF THE IIND ADDL.MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P14: TRUE COPY OF THE ORDER DT.12.12.2006 IN IA NO.6565/2006 IN O.S.NO.367/2006 ON THE FILE OF THE IIND ADDL.MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P15: TRUE COPY OF THE JUDGEMTN DT.3.4.07 IN OS NO.367/06 ON THE FILE OF THE IIND ADDL.MUNSIFF COURT, THIRUVANANTHAPURAM.

EXT.P16: TRUE COPY OF THE ORDER DT.21.7.07 INIA NO.1267/07 IN A.S.NO.43/07 ON THE FILE OF THE SUB COURT, THIRUVANANTHAPURAM.

//TRUE COPY//

P.A. TO JUDGE

ANTONY DOMINIC, J.

==========
W.P.(C) NO.25430 OF 2007 - B
==========

Dated this the 5th day of December, 2007

J U D G M E N T

Petitioner has entered into an agreement for sale with the 1st respondent. The 1st respondent committed default in conveying the loan to the petitioner. Thereupon, the petitioner filed a suit as O.S. No.492/02 before the Additional Sub Court, Trivandrum., in which Ext.P5 ex-parte decree was passed by the court below. Subsequently, the defendant in the suit, the 1st respondent herein filed an application for setting aside the ex parte decree and that was allowed by the court. Against the order so passed, the petitioner has filed W.P.(C) No.1648/07 and it is submitted that the said writ petition is pending with an order of stay of further proceedings before the court below.

2. On account of the default committed by the 1st respondent to the 2nd respondent Bank, the Bank initiated proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is also stated that the building which was in the possession of

the petitioner is also presently in the possession of the Bank and the proceedings have reached the stage of sale. It is at that stage petitioner has filed this writ petition challenging the proceedings initiated by the Bank.

3. Although the very initiation of the proceedings by the Bank is under challenge, I am not inclined to entertain that challenge for the reason that the Bank was well justified in proceeding against the mortgaged property. If that be so, on merits, the contentions raised by the petitioner are only to be rejected. However, the petitioner submits that she is willing to discharge the liability that is due to the Bank.

4. Learned counsel for the Bank on instructions submits that presently an amount of Rs.8,78,672/- + interest is due to the Bank. It is also stated that as far as the Bank is concerned, the petitioner is a stranger and therefore the Bank has no privity of contract with the petitioner. Be that as it may, now that the petitioner is willing to unconditionally discharge the liability of the 1st respondent to the Bank, if the petitioner makes deposit of the amount that is due, the Bank should have no objection in accepting the same.

5. Therefore, I am inclined to consider the request of the petitioner for permitting her to discharge the liability of the 1st respondent to the 2nd respondent.

6. Notice was issued to the 1st respondent, but none appeared and hence, I take it that, the 1st respondent is not contesting the case.

7. Accordingly, I direct that within three weeks from today, towards the amount that is due from the 1st respondent to the 2nd respondent Bank, the petitioner shall deposit an amount of Rs.3,00,000/-. Once such deposit is made it will be open to the Bank to appropriate the amount so deposited towards the liability of the 1st respondent. On such deposit being made, if the possession of the property was taken over from the petitioner, the Bank shall hand over the key to the petitioner. Thereafter, the petitioner shall pay the balance amount due from the 1st respondent to the 2nd respondent Bank in five equal monthly instalments commencing from 15th of January 2008 and the subsequent instalments payable on the 15th of every succeeding month.

8. It is clarified that in the event the petitioner commits default in complying with any of these conditions, it will be open

to the Bank to proceed with the Securitisation proceedings without any further notice either to the petitioner or the 1st respondent.

9. It is also clarified that if the petitioner discharges the liability of the 1st respondent as stated above, the petitioner will be free to recover the same from the 1st respondent in accordance with law.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

Rp